THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

WRIT PETITION No.14946 of 2007

DATED : 02-08-2007

Between :

K. Stalin and another.

…Petitioner.

AND

Government of Andhra Pradesh,
Rep.by its Chief Secretary,
Secretariat, Hyderabad and 4 others.

…Respondents.

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ADVANCE ORDER : (per the Hon'ble Sri Justice D.S.R.Varma)

Heard learned counsel for the petitioners and the learned Assistant Government Pleader, representing the learned Advocate General appearing for the respondents.

2. The relief sought for in the present writ petition is as follows:

"It is prayed that this Hon'ble Court may be pleased to issue a writ, order or direction, more particularly one in the

nature of Writ of Habeas Corpus seeking a direction to the respondents to produce (1) Chatla Venkateswarlu, s/o. Gopaiah, aged 58 years, (Old CT-4277; New CT-1995); (2) Katarapu Kannaiah, s/o. Jamalaiah, aged about 60 years, (Old CT-4279; New CT-1997); (3) Kota Souri, s/o. Mahalaxmaiah, aged about 60 years (Old CT-4280; New CT-1998), all are residents of Penuganchiprolu village and Mandal, Krishna District, from the 5th respondent Central Prison and set them free forthwith as their detention in the said prison is arbitrary, illegal and to pass such other order or orders in the interest of justice."

3. From the above, the grievance of the petitioners appears to be that the alleged detenus have been arrested on 09-05-2007 pursuant to the orders of the Supreme Court passed in Criminal Appeal Nos.491 and 488 of 1978, dated 12-02-2007.

4. The factual matrix, in brief, appears to be that all the above three detenus were Accused Nos.7, 10 and 11 along with other accused in S.C.No.44 of 1976 on the file of the Sessions Court at Machilipatnam. All of them were convicted by the Sessions Court, which has been confirmed by the High Court of Andhra Pradesh, in Criminal Appeal Nos.1034 and 1035 of 1976, dated 06-12-1977, and the same has become the subject matter in Criminal Appeal Nos.491 and 488 of 1978 before the Supreme Court.

5. From a perusal of the orders passed by the apex Court, it could be seen that the orders of the High Court of Andhra Pradesh, Hyderabad, confirming the conviction and sentence passed by the Sessions Court, was confirmed. However, when it was brought to the notice of the apex Court about the remission granted by the Government of Andhra Pradesh in G.O.Ms.No.580, Home (Prisons-C) Department, dated 20-10-1984, Their Lordships observed

as under:

> "It is made clear that pursuant to dismissal of these appeals, if it is found that the appellants have not served out the sentence, the Sessions Court, Krishna Division, Machilipatnam, shall take appropriate steps.
>
> However, if the appellants are able to show that they have already been given the benefit of remission, they will be entitled to the benefit of the aforesaid Government Order."

6. From the above, it is obvious that the conviction was confirmed, however, it was made clear by the apex Court that if it is found that the alleged detenus did not serve the required length of sentence, the Sessions Court shall take appropriate steps. However, in the last paragraph, it has been stated that if the detenus are able to show that they have already been given the benefit of remission, they would be entitled to the benefit of the G.O. passed by the Government of Andhra Pradesh.

7. Therefore, it is obvious that the observations made in the last paragraph are by way of exemption to the directions given in the penultimate paragraph of the orders of the apex Court.

8. Now, the ground reality in the present case is that the alleged detenus, who were accused in S.C.No.44 of 1976 had served during the diabolic cyclone that took place in the year 1977 in the entire State of Andhra Pradesh, particularly in the coastal area, more particularly Diviseema and as a matter of recognition for their valuable service rendered in helping several people and also in view of the fact that they brought several people from the jaws of death, they were rewarded with remission of sentence by issuing G.O.Ms.No.1828, Home (Prisons-A) Department, dated
17-12-1977. In the said G.O., it has been specifically mentioned that for

the commendable work done by fifty convicts of Central Prison, Rajahmundry, in which the present detenus also include, subject to certain conditions as regards the length of sentence, remission has been granted and accordingly all the three detenus have been released, inasmuch as, they have completed the sentence of five (5) years by 23-08-1980, 12-08-1980 and
23-08-1980, respectively.

9. Therefore, in any event, by virtue of the judgment of the apex Court, despite the confirmation of the judgment of conviction and sentence passed by the High Court, the alleged detenus were clearly entitled for the benefit under G.O.Ms.No.1828, Home (Prisons-A) Department, dated 17-12-1977.

10. But, now the present grievance is that the Principal District and Sessions Judge, Krishna District at Machilipatnam, issued warrants of arrest of the alleged detenus, apparently in the light of the directions given in the penultimate paragraph of the apex Court. But, we are of the view that as a matter of exemption, Their Lordships of the apex Court wished that the alleged detenus shall not be subjected to arrest again, if they are already enjoying the benefit of remission under the G.O. passed by the Government of Andhra Pradesh. However, the only mistake that crept in is that before the apex Court, the G.O. under which the alleged detenus were released was wrongly mentioned as G.O.Ms.No.580, Home (Prisons-C) Department, dated 20-10-1984.

11. From the order of release of the alleged detenus, by any stretch of imagination, they could not have been released under G.O.Ms.No.580, Home (Prisons-C) Department, dated 20-10-1984, because their release was much prior to the said G.O.

12. Now, the question is, which is the G.O., that would be applicable for the purpose of release of the alleged detenus. The G.O., in fact, was G.O.Ms.No.1828, Home (Prisons-A) Department, dated 17-12-1977, wherein and whereby the names of the alleged detenus were also mentioned along with other detenus, specifically in Annexure-II appended to the said G.O., and the names of the alleged detenus are found at Sl.Nos.6, 7 and 8 and the purpose of their release was also shown as remission as a matter of recognition for their service rendered in the cyclone. It is only under the mistaken impression, the learned Principal District and Sessions Judge, Krishna, ordered arrest of the alleged detenus, at this point of time.

13. Therefore, viewed from any angle, may be from the order of the apex Court and also in view of the G.O. that was made applicable to the alleged detenus, which is not disputed, the present arrest of the alleged detenus is totally unwarranted, particularly after a long lapse of 26 years from the date of their release under G.O.Ms.No.1828, Home (Prisons-A) Department, dated 17-12-1977.

14. For the foregoing the warrants issued against the alleged detenus are liable to be quashed and the detenus shall be released forthwith.

15. In the result, the writ petition is allowed quashing the warrants issued against the alleged detenus viz.,
(1) Chatla Venkateswarlu, s/o. Gopaiah, aged 58 years (Old CT-4277; New CT-1995); (2) Katarapu Kannaiah, s/o. Jamalaiah, aged about 60 years (Old CT-4279; New CT-1997); and (3) Kota Souri, s/o. Mahalaxmaiah, aged about 60 years (Old CT-4280; New

CT-1998), and the detenus shall be released forthwith, if they are not required in any other offence.

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JUSTICE D.S.R.VARMA

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JUSTICE D.APPA RAO

02-08-2007
Msr.

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